

August 6, 2018

VIA ECFS AND IBFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Presentation – WC Docket No. 18-193; ITC-T/C-20180612-00109 – TKC Holdings, Inc., Inmate Calling Solutions, LLC d/b/a ICSolutions, and Securus Technologies, Inc.

Dear Ms. Dortch:

TKC Holdings, Inc. (“TKC”), Inmate Calling Solutions, LLC d/b/a ICSolutions (“ICS”) and Securus Technologies, Inc. (“STI,” and collectively, with TKC and ICS, “Applicants”), acting through counsel and in accordance with the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice,¹ hereby submit this ex parte presentation in response to the July 17, 2018, Reply Comments of the Office of the Attorney General of the Commonwealth of Massachusetts.²

The AG Reply asserts that approving the pending Joint Application will leave the Commonwealth of Massachusetts (“Commonwealth”) with “only two ICS contractors” who “constitute the nationwide duopoly identified in the Petition to Deny.”³ Further, the AG Reply claims that approval will “weaken” the Commonwealth’s “ability to negotiate calling rates affordable for inmates and their families”⁴ These assertions about the potential inevitable competitive impact of the transaction are incorrect and do not warrant denial or delay of the Joint Application.

In their detailed Joint Opposition to the Petition to Deny, filed the same day as the AG’s Reply, Applicants thoroughly rebutted and debunked the idea that any jurisdiction would be left with only two bidders in future contracts.⁵ As demonstrated therein with historical bidding information, many incumbent competitors besides Global Tel*Link Corporation (“GTL”) and STI can and do provide inmate telephone service (“ITS”) even to larger correctional facilities today,

¹ *Application Filed for the Transfer of Control of Inmate Calling Solutions, LLC d/b/a ICSolutions to Securus Technologies, Inc.*, Public Notice, DA 18-684 (rel. Jul. 2, 2018) (“Public Notice”).

² *Reply Comments of the Commonwealth of Massachusetts, Office of the Attorney General, WC Docket No. 18-193* (filed Jul. 23, 2018) (“AG Reply”).

³ *Id.* at 1.

⁴ *Id.*

⁵ *Joint Opposition To Petition To Deny By The Wright Petitioners et al.*, WC Docket No. 18-193; ITC-T/C/20180612-00109, at 15-27 (filed Jul. 23, 2018) (“Joint Opposition”).

including CenturyLink, Inc. (“CenturyLink”) and several other rivals.⁶ More importantly, there are no meaningful barriers hindering any rivals from bidding on and winning more ITS business for correctional facilities of all sizes. Further, the barriers to entry by entirely new providers are relatively low. To the extent that the AG Reply seeks to piggyback on the claims of the Corrections Accountability Project (“CAP”), Applicants have similarly demonstrated that the CAP assertions are without merit.⁷ The AG’s general exhortations do not in any way counter the Joint Opposition and Joint Reply on these issues.

The AG Reply’s claims about intrastate calling rates are another attempt to inject an industry-wide policy issue into an FCC transfer of control proceeding. As the Joint Opposition notes, the Commission has long held that transaction proceedings are not the proper forum to resolve such issues.⁸ Moreover, the Applicants respectfully note that the Commission does not have jurisdiction over intrastate ITS rates.⁹

Further, even assuming that such a claim is relevant in this context, the AG Reply assumes that ITS providers are somehow in a position to dictate to correctional facility administrators the rates charged from their locations. That is simply not the case. As explained in the Joint Reply, jail administrators and counties set rate and commission levels after balancing the needs of inmates, friends, family members and those of public safety.¹⁰ The AG Reply’s assertion of such “control” is belied by the rate negotiated by the MADOC¹¹ just this year for its most recent

⁶ According to STI, CenturyLink and three other service providers (GTL, ICS, Legacy Long Distance International, Inc.) participated in bidding on one or more of the contracts that were opened for competition in the Commonwealth since 2011 – the Massachusetts Department of Corrections (“MADOC”), Barnstable County and Hampden County. Pay Tel Communications, Inc. and Network Communications International Corp. d/b/a NCIC are ITS providers currently registered with the Department of Telecommunications and Cable (“DTC”). Because of the changes in Massachusetts law discussed below, there may be other active providers who are not required to register with that DTC.

⁷ *Consolidated Joint Reply Comments Of TKC Holdings, Inc., Inmate Calling Solutions, LLC d/b/a ICSolutions and Securus Technologies, Inc.*, WC Docket No. 18-193; ITC-T/C/20180612-00109, at 5-7 (filed Jul. 23, 2018) (“Joint Reply”).

⁸ Joint Opposition at 8-9.

⁹ See *Global Tel*Link v. FCC*, 866 F.3d 397, 408-412 (D.C. Cir. 2017).

¹⁰ Joint Reply at 6-7. With respect to in-person visits versus video visitation services (AG Reply at 2, n.1), decisions to restrict in person visits would be made by the Massachusetts correctional facility administrators, not dictated by STI. Finally, the status of video visitation in Massachusetts is totally irrelevant to Commission consideration of the merits of the Joint Application.

¹¹ The MADOC is by far the largest correctional system in the Commonwealth, with an estimated average daily inmate population (“ADP”) of approximately 9,000.

contract, which it awarded to STI. STI agreed to charge a per minute rate of \$0.10 for all intrastate calls, which is well below the interim rates currently approved by the DTC.¹²

The AG Reply again attempts to raise rate fears by blaming STI for the policy decision of the Massachusetts legislature to limit the DTC's jurisdiction over Internet Protocol enabled services.¹³ This is another basis, the AG Reply asserts, for denying the pending Joint Application. Again, this is an attempt to insert a totally extraneous state-related issue into this FCC transfer of control proceeding. STI cannot be "penalized" in the instant FCC proceeding for relying on a policy decision made by the Commonwealth's legislature, which to date has not been questioned by the regulatory agency itself even after being duly informed of the effects of this policy decision by STI in 2016. Furthermore, as the new MADOC contract demonstrates, correctional facilities can and do control rates charged in their facilities regardless of whether those rates are regulated by the DTC.

In sum, Applicants have responded to and answered the competition issues raised by the AG Reply. Other assertions are false or have no place in considering the public interest merits of this transaction as reflected in the Joint Application and the Joint Opposition. The AG Reply does not take issue with those representations. Nothing raised by the AG Reply justifies denial or delay in acting on the Joint Application.

¹² STI fully complies with the interim interstate per-minute rate caps set by the Commission at all facilities it serves, including for interstate calls originating in Massachusetts. 47 C.F.R. § 64.6030.

¹³ Mass. Gen. Laws Chapter 25C, Section 6A provides, with certain exceptions not applicable here, that "notwithstanding any other general or special law to the contrary, no department, agency, commission or political subdivision of the commonwealth, shall enact, adopt or enforce, either directly or indirectly, any law, rule, regulation, ordinance, standard, order or other provision having the force or effect of law that regulates or has the effect of regulating, the entry, rates, terms or conditions of VoIP Service or IP enabled service." Mass. Gen. Laws ch. 25C, § 6A(b). It further defines "Internet Protocol enabled service" or "IP enabled service" as a "service, capability, functionality, or application provided using Internet Protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet Protocol format or any successor format, regardless of technology; provided, however, that no service included within the definition of 'Voice over Internet Protocol service' shall be included within this definition." *Id.* § 6A(a). STI employs outbound-only IP-based network technology in providing its ITS.

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Respectfully submitted,

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cc: The Honorable Maura Healey, Attorney General, Commonwealth of Massachusetts
(by First Class Mail)
Jodie May, Wireline Competition Bureau, FCC (by email)
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DECLARATION OF DENNIS J. REINHOLD

I, Dennis J. Reinhold, hereby declare under penalty of perjury as follows:

1. I am the Senior Vice President and General Counsel of Securus Technologies, Inc.;
2. I have read the foregoing Ex Parte Presentation, which was prepared pursuant to my supervision and control;
3. This Declaration is submitted in support of the foregoing Ex Parte Presentation; and
4. The allegations of fact contained in the Ex Parte Presentation are true and correct to the best of my knowledge and belief.

Dated: August 6, 2018


Dennis J. Reinhold